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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,206	01/02/2004	Michael Diep	115-231T-001	3396

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/751,206	Applicant(s) DIEP, MICHAEL	
	Examiner Yvonne R. Abbott	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7-16,19 and 20 is/are rejected.
- 7) ☒ Claim(s) 2,3,6,17,18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/10/05 have been fully considered but they are not persuasive. Applicant argues that base claim 15 is not anticipated by Cosmic Pet Product's Alpine Scratcher since it does not incorporate an abrasive surface, and "corrugate cardboard ... is not intended for such use" (i.e. dulling or sanding an animal's claws). Although Applicant has amended Claim 15 to now recite that the abrasive surface comprises "abrasive particulates or grains", and thereby distinguishing over the Alpine Scratcher, it should be noted that the prior art, specifically the Pettsuruto reference, teaches that corrugated cardboard can be used to file or polish nails.

Applicant additionally refutes the application of Kahanick in view of Kacic to claims 1, 4, 15 and 16 arguing that "Kacic teaches away from the present invention by alleging that cat owners are "seldom successful" at getting their cats to scratch scratching posts", thus "this reference teaches away from using an abrasive surface with scratching devices" (Applicant's Remarks). To say that because Kacic recites that "cat owners are seldom successful at getting their cats to scratch scratching posts", doesn't necessarily mean that cat's don't use scratching posts; alleged infrequent use of the scratch post does not negate using an abrasive surface with a scratching post. To the contrary, the Kacic recitation could actually be interpreted as acknowledging the existence or possibility of an abrasive scratch post, but further stating it wouldn't be used as much as a litter box. Furthermore the abrasive material of Kacic, namely

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aluminum oxide particulate, is considered to read on the new subject matter of newly amended claim 15. Accordingly, this rejection is maintained.

As to the rejection based on the Pettsuruto and Kacic references, Applicant argues the inapplicability of Kacic (which has been addressed in the preceding paragraph), and further that Pettsuruto provides no motivation to combine the scratcher invention with an abrasive surface. As to the latter argument, and as addressed earlier, the Pettsuruto reference alone teaches a nail file for cats, whereby the animal scratches corrugated cardboard (which is considered an abrasive surface) to file or polish nails. Since both references teach use of abrasive material used by animals to scratch there is motivation to combine, and the rejections are maintained.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahanick (3,486,485) in view of Kacic (5,564,365). Kahanick shows a cat clawing pad in a housing assembly having walls comprising a corrugated bundle (30) (which is well known to include a liner wall and a rippled sheet coupled to the liner); and a floor member (24) coupled to the corrugated bundle. Kacic teaches a litter box or housing assembly having abrasive material which dull cat claws incorporated into the surface of

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the box in the form of spraying, rolling or applying sheets of abrasive material to the box surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the floor member of Kahanick comprise the abrasive material taught by Kacic in order to further enhance the nail/claw dulling effect and to continue to provide such an effect if/when the corrugated material is worn down by the cat scratching to the bottom of the box prior to replacement.

4. Claims 1, 4, 5, 7, and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pettsuruto (JP 11018609A) in view of Kacic (5,564,365). Pettsuruto shows a cat clawing nail file/polishing pad in the form of a corrugated bundle (11) (which is well known to include a liner wall and a rippled sheet coupled to the liner) received in a housing assembly or holder having walls; and a floor member (1) coupled to the corrugated bundle; the holder further comprising a support member or cover flap (2) that can be locked in an elevated position to an elevation higher than the corrugated bundle (Figure 2), and having an aperture (6) through which a protrusion from a wall can be extended to hang the flap, wherein a portion of the support member or cover flap is selectively capable of being positioned to extend downward from the holder (Fig. 1); further comprising at least one support flap (9) formed on the holder and being configured to be insertable within an aperture of the cover flap to aid in locking the cover flap in the elevated position. Kacic teaches a litter box or housing assembly having abrasive material (aluminum oxide particulate) which dull cat claws incorporated into the surface of the box in the form of spraying, rolling or applying

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sheets of abrasive material to the box surface. Since both Pettsuruto and Kacic teach use of abrasive material for animals to scratch, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the floor member of Pettsuruto comprise the abrasive material applied onto the interior surface as taught by Kacic in order to further enhance the nail file/ dulling effect and to continue to provide such an effect if/when the corrugated material is worn down prior to replacement.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pettsuruto in view of Kacic as applied to claim 5 above, and further in view of Ishikawa (JP 2003180188A). Although Pettsuruto in view of Kacic teach a device for dulling animal claws having a corrugated bundle and a cover flap, catch channels proximate the cover flap are not shown. Ishikawa also teaches a cat nail sharpener comprising an abrasive element of corrugated paperboard, and further comprising channels (54) between the paperboard to catch paper dust generated from the scratching the corrugated surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide channels within the claw dulling device of the combination of Pettsuruto and Kacic as taught by Ishikawa that such holes or channels provide for easy clean up and maintenance by catching paper dust and prevent the floor or carpeting from being stained or covered with the paper dust particles.

6. Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pettsuruto (JP 11018609A) in view of Kacic (5,564,365). Pettsuruto shows a

method of dulling cat claws comprising a housing assembly or holder having walls which receive a corrugated pad or bundle (11) (which is well known to include a liner wall and a rippled sheet coupled to the liner); and a floor member (1) coupled to the corrugated bundle; the holder further comprising a support member or cover flap (2) that can be locked in an elevated position to an elevation higher than the corrugated bundle (Figure 2) such that cardboard pieces are kept from being propelled away from the holder by a cat scratching the device. Kacic teaches a method of using a litter box or housing assembly having abrasive material which dull cat claws incorporated into the surface of the box in the form of spraying, rolling or applying sheets of abrasive material to the box surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the floor member of Pettsuruto comprise the abrasive material applied to the interior surface as taught by Kacic in order to further enhance the nail/claw dulling effect and to continue to provide such an effect if/when the corrugated material is worn down prior to replacement.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pettsuruto in view of Kacic as applied to claim 19 above, and further in view of Ishikawa (JP 2003180188A). See discussion in paragraph 6 above.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kahanick (3,486,485) in view of Kacic (5,564,365). Kahanick disclose a method of dulling cat claws comprising a housing assembly having walls comprising a corrugated pad or bundle (30) (which is well known to include a liner wall and a rippled sheet coupled to

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the liner); and a floor member (24) coupled to the corrugated bundle; wherein catnip or other attracting material is placed within the cardboard scratcher to induce the cat to scratch. Kacic teaches a litter box or housing assembly having abrasive material which dull cat claws incorporated into the surface of the box in the form of spraying, rolling or applying sheets of abrasive material to the box surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the floor member of Kahanick comprise the abrasive material taught by Kacic in order to further enhance the nail/claw dulling effect and to continue to provide such an effect if/when the corrugated material is worn down by the cat scratching to the bottom of the box prior to replacement.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kahanick (3,486,485) in view of Kacic (5,564,365) as applied to claim 15, and further in view of Worldwide Inc.'s, Cat Scratcher, August 30, 2001, (www.worldwise.com/widbodcatscr.html), which discloses that a cat scratcher and Certified Organic Catnip were introduced 6 years prior (to 8/30/01). Although a method of dulling cat claws by providing an elevated holder containing a corrugated scratcher treated with catnip which attracts the cats to use the scratcher, it is not disclosed that the catnip is organic. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use organic products as taught by Worldwide Inc. if one wished to use a product having no synthetic fertilizers or pesticides, being free

from chemical injections or additives in order to provide a more healthy product for the cat to consume.

Allowable Subject Matter

10. Claims 2, 3, 6, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

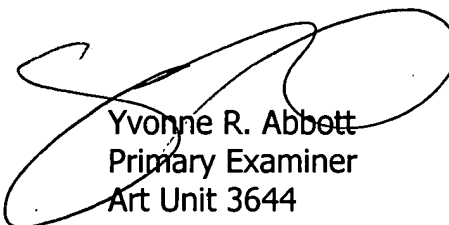
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644

3/31/05